Canadian Association of
Professional Immigration Consultants

L'Association Canadienne des
Conseillers Professionnels en Immigration

Policy Position Submission presented by the Canadian Association of Professional Immigration Consultants, CAPIC, concerning the use of Artificial Intelligence (AI) in Canadian Immigration.

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About CAPIC

The Canadian Association of Professional Immigration Consultants (CAPIC) is the professional organization representing the interests of Canadian Immigration Consultants. The organization advocates for competency, ethical conduct and consumer protection in the immigration consulting industry.

CAPIC's mission is to lead, connect, protect and develop the profession, serving the best interests of its members. It is the only association recognized by the Government of Canada as the voice of Canadian immigration and citizenship consultants.

CAPIC is a major stakeholder consulting with federal and provincial governments and their respective departments (IRCC, CBSA, IRB, ESDC) on legislation, policy, and program improvements and changes.

CAPIC has over 2900 members comprised of Regulated Canadian Immigration Consultants and Canadian Immigration Lawyers.

Preamble

CAPIC is submitting this white paper as CAPIC's official stance to guide policy making on artificial intelligence (AI) and other automated decision-making technologies currently being used in Canadian immigration processes. Hereafter the terms "AI", "AI decision-making" and "AI technologies" are used interchangeably.

What is AI?

Artificial intelligence can be defined as a device that perceives its environment and takes actions that maximize its chance of successfully achieving its goals.[1] In everyday life, AI refers to computers that imitate human cognitive abilities, including learning and problem solving.[2]

Since 2000, AI has risen to prominence thanks to increased computing power, greater quantity of available data and other advances.[3] AI has been used to

[1] Stuart J. Russell and Peter Norvig, *Artificial Intelligence: A Modern Approach,* (New Jersey: Prentice Hall, 2003), 55.
[2] Russell and Norvig, *Artificial Intelligence,* 2.
[3] Jack Clark, *Why 2015 Was a Breakthrough Year in Artificial Intelligence,* www.Bloomberg.com, Updated December 10, 2015, https://www.bloomberg.com/news/articles/2015-12-08/why-2015-was-a-breakthrough-year-in-artificial-intelligence

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solve difficult problems in computer science and software engineering.[4]

Applications of AI in everyday life include speech, image and pattern recognition, mapping and direction finding, purchasing items online and video/TV/music recommendations, among others.

Background

The Canadian government has been using AI from at least 2014.[5] In 2018, Immigration, Refugees and Citizenship Canada (IRCC) started a Pilot Project to process online Temporary Resident visa applications from China and India using AI.[6] The IRCC also investigated AI to support processing of Pre-Removal Risk Assessment (PRRA) and Humanitarian and Compassionate applications.

In April 2019, the IRCC announced plans to create a "Playbook on Automated Decision Support."[7] A report from Citizen Lab and the International Human Rights Program at the University of Toronto's Faculty of Law says that AI technology has expanded to decisions normally made by people. Such decisions include whether an application is complete, whether a marriage is "genuine", or whether someone should be designated as a "risk."[8]

Included at the start of the report is a line Petra Molnar is often quoted speaking publicly: "...the use of algorithmic and automated technologies to replace or augment administrative decision-making in [the immigration] context threatens to create a laboratory for high-risk experiments within an already highly discretionary system."

To this end, we look to the concerns set out at the beginning of this piece that arise from the introduction of AI/ML [*machine learning*] solutions within immigration law and practice, namely:

1) loss of discretion
2) procedural fairness
3) potential bias
4) lack of transparency. [9]

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[4] Russell and Norvig, *Artificial Intelligence,* 28.
[5] Mario D. Bellissimo, LL.B., C.S., *Discretionary Decision-Making and Artificial Intelligence in Canadian Immigration Law and Practice: In Whose Best Interests?* Toronto, October 3, 2019, 1.
[6] IRCC, *Artificial Intelligence and Augmented Decision-making @ IRCC*, IRCCIP Conference, May 8, 2019, 5.
[7] Bellissimo, *Discretionary Decision-Making,* 4.
[8] Petra Molnar and Lex Gill, *Bots at the Gate: A Human Rights Analysis of Automated Decision Making in Canada's Immigration and Refugee System*, www.citizenlab.ca, September 26, 2018, https://citizenlab.ca/2018/09/bots-at-the-gate-human-rights-analysis-automated-decision-making-in-canadas-immigration-refugee-system/
[9] Molnar and Gill, *Bots at the Gate*

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In other jurisdictions

In New Zealand, "operational algorithms" are used in visa processing to perform biometric matching, risk-evaluation, screening and triage. In Australia, similar tools such as processing automation, analytics, AI and machine learning are used to help deliver assessments.[10]

Potential benefits of AI

Using AI can help reduce growing application backlogs. Automating routine tasks allows immigration officials to focus on detecting fraud and verifying identity. AI can also help detect incomplete applications.

The IRCC's reason for implementing AI was in response to public request to eliminate backlogs. A pilot was launched in China and India to reduce backlogs using AI as primary, then humans as secondary. This pilot proved effective.

In Canada, the first instance of the use of "machine learning technology" in practice did not come until April 2018 when a pilot project was initiated by IRCC for processing on-line temporary resident applications from China specifically. A similar project was announced in August of that same year, but for processing of temporary resident applications from India.[11]

According to the IRCC, using AI technologies has created efficiencies and improved productivity when triaging applications. The IRCC also claims that program integrity is improved, and money has been saved.[12]

In a presentation to stakeholders from April 2019, the IRCC says new tools should deliver a clear public benefit. The IRCC says that humans, not computer systems, are responsible for decisions. It acknowledges concerns about bias.[13]

Potential drawbacks of AI

The primary challenges of AI decision-making are potential impacts on discretion and procedural fairness, consequences of unintended bias/discrimination in application assessment, privacy and transparency.[14]

[10] Bellissimo, *Discretionary Decision-Making,* 5.
[11] Bellissimo, *Discretionary Decision-Making,* 3.
[12] IRCC, *Augmented Decision-making @ IRCC,* 7.
[13] IRCC, *Augmented Decision-making @ IRCC,* 14.
[14] Bellissimo, *Discretionary Decision-Making,* 6.

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The aforementioned report from Citizen Lab finds that AI decision-making might violate Canadian and international human rights law. Human rights violations

may also occur if AI decision-making fails to understand the intricacies in many immigration and refugee applications.[15] The same report warns of 'big data' surveillance by agencies such as CSIC and CSE, that feed into automated decision systems in the immigration and refugee law context. [16]

The potential impact of automated decision-maker systems on individuals' physical safety, human rights, and livelihoods is far reaching. Bias, error, or system failure can result in irreparable harm to individuals and their families.[17]

Adopting AI decision-making without building in human rights protections from the get-go risks exacerbating current disparities. In the worst-case scenario, wrong decisions might have severe consequences such as people being wrongly deported to countries where their safety is threatened.

The greatest impact would be on marginalized groups and individuals. These people often have diminished access to human rights protections and fewer resources to defend their rights.[18]

The Citizen Lab report emphasizes that in standard practice, machine learning assumes the future will look like the past. When the past is unfair or biased, machine learning will propagate these biases and enhance them through feedback loops. In other words, the values, assumptions, biases, shortcomings and blind spots involved in the selection or substantive content of training data – as well as the types of input data deemed 'relevant' to an automated system's decision-making process – will impact both outputs and outcomes. [19]

The IRCC claims that "an extremely rigorous quality assurance process" was followed and that AI produced results which were very consistent with human decision-making. The ministry also claims that it is not automating decisions in high-stakes cases such as asylum, humanitarian and compassionate grounds and Pre-Removal Risk Assessment. Moreover, they also claim to not use algorithms that make determinations in unknowable or unexplainable ways.

Finally, the IRCC says it does not plan to displace the central role of officers in immigration decision-making.[20] If AI is proven to be a biased algorithm, the IRCC may experience public criticisms of its integrity.

[15] Molnar and Gill, *Bots at the Gate*
[16] Molnar and Gill, *Bots at the Gate*
[17] Molnar and Gill, *Bots at the Gate*, 11.
[18] Molnar and Gill, *Bots at the Gate*
[19] Molnar and Gill, *Bots at the Gate*, 13.
[20] IRCC, *Augmented Decision-making @ IRCC,* 2.

Recommendations

As a recognized partner and collaborator of the IRCC, CAPIC urges the government to use AI decision-making to *complement* human immigration officials.

It is not viable to expect the technology to replace humans without potentially severe consequences. Technology ought to aid and inform humans but avoid leading to conclusions and disturbing officials' discretion.

It is also crucial to adopt best practices with respect to AI decision-making. Standards and regulations must be established in transparency, accountability, privacy, redress and clear communication. Transparency must be balanced with safety. Immigration applicants must be provided with clear explanations regarding decisions on their applications. Applicants should have access to redress, including the right to review and appeal decisions. Processes must be in place to address any negative impacts or unintended consequences from AI-driven bias or discrimination.

AI should be used as a triage method based on approved applications. In other words, any application the AI cannot approve would be sent to an officer.

Other concerns include the potential for bots overriding systems, algorithm identification, fraud and corruption in visa offices. There also must be some way to identify which decisions are AI-generated. Full disclosure of these automated decisions should also be accessible and available.

All cases rejected by AI should be examined again by an officer to ensure due process is followed.

AI is indeed the future on a global scale, but we must tread carefully. Technology only moves in one direction – forward. We must work together taking mindful and methodical steps as we innovate the future of immigration in Canada.

In conclusion, we submit that as IRCC's use of AI continues to evolve, it is reasonable that human review of AI also continues, to reach maximum efficiency with fairness. CAPIC looks forward to ongoing participation in the human review aspect of AI.

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